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CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. ~~930~~ 137

JOSEPH B. STRATON, RAYMOND FLESHMAN, AND RANDOLPH BIAS, SPECIAL COMMISSIONERS OF THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA, APPELLANTS,

versus

ANDY NEW, JR., TRUSTEE IN BANKRUPTCY OF FALL BRANCH COAL COMPANY, A CORPORATION, BANKRUPT, FIRST NATIONAL BANK OF BLUEFIELD, A BANKING CORPORATION, AND EDWIN MANN, AND ALL OTHERS SIMILARLY SITUATED, ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA, AT BLUEFIELD. IN BANKRUPTCY.

On a Certificate from the United States Circuit Court of Appeals for the Fourth Circuit.

Filed

Office Supreme Court, U. S.
FILED
MAY 22 1930

United States Circuit Court of Appeals

Fourth Circuit.

No. 2847.

Joseph B. Straton, Raymond Fleshman and Randolph Bias, Special Commissioners of the Circuit Court of Mingo County, West Virginia, Appellants,

versus

Andy New, Jr., Trustee in Bankruptcy of Fall Branch Coal Company, a corporation, Bankrupt, First National Bank of Bluefield, a banking corporation, and Edwin Mann, and all others similarly situated, et al., Appellees.

Appeal from the District Court of the United States for the Southern District of West Virginia, at Bluefield.

Question certified to the Supreme Court of the United States by the Circuit Court of Appeals of the Fourth Circuit on the case stated.

STATEMENT OF FACTS.

This is an appeal from an order entered in the bankruptcy proceedings of the Fall Branch Coal Company enjoining commissioners, appointed by a West Virginia

state court, from proceeding with the sale of certain property of the bankrupt as ordered by the decree of that court. The petitioners in the court below, upon whose plea the injunction was granted, were the trustees in bankruptcy of the coal company, the First National Bank of Bluefield and one Edwin Mann,—the last two being holders of mortgages or deeds of trust upon the coal company's property. The petition sets forth that the commissioners were advertising for sale only the property of bankrupt situate in West Virginia, that it would be advantageous to all parties to have this property sold in connection with property of bankrupt situate in Kentucky, and that the bankruptcy court had exclusive jurisdiction to make the sale. The commissioners, in their answer, denied the right of the District Court to enjoin the proceedings in the state court, and from the order awarding the injunction appealed.

The facts with regard to the suit in the state court are as follows: One Paul Z. Alley, on April 11, 1927, obtained a judgment against the coal company in the Circuit Court of Mingo County, West Virginia, which was duly docketed on May 5, 1927, in the county clerk's office and thereupon became a lien upon its real estate situate in that county. On February 20, 1928, he filed in that court against the coal company a judgment creditors' suit, making parties thereto all creditors having liens upon its real estate, including the First National Bank of Bluefield and Edwin Mann, and asked that the liens and assets he marshalled and that the real estate of the coal company in Mingo County be sold and the proceeds thereof be distributed among the lien claimants in accordance with their respective rights. The cause was duly matured, and at the April term, 1928, was referred to a commissioner in chancery to report the real estate owned by the coal company and the liens thereon. At the July term, 1928, the commissioner made his report and thereupon three commissioners were appointed to make sale of the property. On August 4, 1928, sixteen months after the rendition of one of Alley's judgments and five and one-half months after the filing of the creditors' bill, the coal company filed its voluntary petition in bankruptcy; and on October 11th following,

while the commissioners of the state court were proceeding to carry out its order of sale, the trustee in bankruptcy with the First National Bank of Bluefield and Edwin Mann filed the petition to enjoin them from proceeding further.

Being divided and in doubt, this Court respectfully certifies to the Supreme Court of the United States for its instruction and advice, the following question of law the determination of which is indispensable to a proper decision of the case.

QUESTION.

Where creditors have obtained and docketed judgments constituting liens on the real estate of defendant, and have instituted a creditors' suit in a state court to marshal and enforce the liens and sell the real estate subject thereto, does the bankruptcy of defendant occurring more than four months after the institution of the creditors' suit oust the state court of jurisdiction, or vest in the court of bankruptcy power to enjoin further proceedings in the state court?

Judge Waddill presided at the hearing of this case, but on account of illness has been unable to confer with regard to same or to join in this certification.

May 9, 1930.

JOHN J. PARKER,
U. S. Circuit Judge.

ELLIOTT NORTHCOTT,
U. S. Circuit Judge.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, CLAUDE M. DEAN, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the aforegoing is a true copy of the original certificate of the question of law to the Supreme Court of the United States in the therein entitled cause filed and now remaining of record in the said United States Circuit Court of Appeals.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, on this 13th day of May, A. D., 1930.

(Seal of Court)

CLAUDE M. DEAN, Clerk,
U. S. Circuit Court of Appeals,
Fourth Circuit.